IN THE HIGH COURT OF BOMBAY AT GOA
****

WRIT PETITION NO. 36 OF 2002

Shri A.V. Prabhu Gaonkar,
resident of House No.79,
Lamgao, Bicholim, Goa. ... Petitioner.

Versus

1. State of Goa, through
its Chief Secretary,
having office at
Secretariat, Panaji,Goa, and

2. The Chief Electrical
Engineer, Government of
Goa, having office at
Electricity Department,
Panaji, Goa. ... Respondents.

Shri M. S. Sonak, advocate for the petitioner.

Ms. Winnie Coutinho, Government Advocate for respondent nos. 1 and 2.

CORAM : A. M. KHANWILKAR &
P. V. HARDAS, JJ.

DATE : 17th December, 2003.

ORAL JUDGMENT (Per Khanwilkar, J.)

By this Writ Petition under Article 226 of the Constitution of India the petitioner prays for following:-

"(A) For a a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, commanding the respondents to do the following things:-

(a) To direct the respondent no.2 to

grant Time Bound Promotional Scale to the petitioner with effect from 1986 with all consequential benefits;

(b) To grant the petitioner pre-revised scale in the Cadre of Lower Division Clerk as has been granted to other similarly situated persons with effect from 31.7.1996;

(c) To direct the respondent no.2 to fix petitioner's scale in the Cadre of Lower Division Clerk corresponding to Pre-revised Scale in terms of order dated 19.2.1998 issued by respondent no.1 on recommendations of Vth Pay Commission Report;

(d) To direct the respondent No.2 to grant Fitness Weightage of 40% Revised Pay Scale with effect from 1.1.1996 in terms of order dated 11.4.2001;

(e) To direct the respondents to grant petitioner 100% pay and allowances

for the period of suspension and dismissal from service without deducting the Subsistence allowance granted to the Petitioner;

(f) To direct the respondents to grant increment to the petitioner for a period of penalty of reduction of scale for one year;

(B) For such other and further reliefs that this Hon'ble Court deems fit and proper;

(C) For costs."

2. Having regard to the limited nature of the controversy involved, it is not necessary for us to advert to all the events that unfolded before the filing of this petition. Insofar as the reliefs in terms of prayer clauses (A) (a), (b), (c) and (d) are concerned, it is not in dispute that in the affidavit filed opposing this Writ Petition, the Department, in substance, has conceded the position that the petitioner would be entitled for the said reliefs. Even the learned Government Advocate appearing for respondent nos. 1 and 2 before us accepts this position. Therefore, the petition ought to succeed on the basis of the stand taken by

the respondents on affidavit, in terms of prayer Clauses (A)(a) to (d). We may mention that insofar as prayer Clause (A)(a) is concerned, in fact, the petitioner had filed a Civil Application before this Court, being Civil Application No.311 of 2002 in the present Writ Petition. In that application, the petitioner had expressly prayed that the respondents be directed to grant reliefs prayed therein forthwith. Prayer Clause (A) (i) of the application specifically prayed as follows:-

> (A) This Hon'ble Court be pleased to direct the Respondents herein to grant the following reliefs to the Applicant:-
>
> (i) Benefits of Time Bound Promotional Scale with effect from 1986 with all consequential benefits;"

It is also not in dispute that the said application has been disposed of on 23rd October, 2002, on which date the learned counsel appearing for the respondents made a statement before this Court that they would take about three months' time to grant the benefit of Time Bound Promotional Scale to the petitioner in terms of prayer Clause (A)(i) of the application. In other words, besides conceding that relief in the affidavit even at the stage of hearing of the interim application that stand has been reiterated on behalf of the respondent. Understood thus, it is not open for the respondents now to resile from that position specially when

the Order dated 23rd October, 2002, has become final or was allowed to become final. This we observe in the context of the submission of Ms. Winnie Coutinho, learned Government Advocate appearing for respondent nos.1 and 2, placing reliance on paragraph 7 of the affidavit in reply. The fact remains that the respondents have partly complied with the direction issued by this Court on 23rd October, 2002. The respondents have, however, extended the benefit of Time Bound Promotional Scale to the petitioner only with effect from 1996 instead of 1986 as was claimed in the Civil Application. That is the next grievance that we propose to deal with.

3. As observed earlier, the respondents having conceded the position the petitioner was entitled for relief in terms of prayer Clause (A) (i) of the Civil Application and that prayer Clause specifically prays for benefits to be extended from 1986 with all consequential benefits, we have no hesitation therefore, in granting relief in terms of prayer Clause (A)(a) of this Writ Petition referred to above; and reject the argument canvassed by Ms. Coutinho, learned Government Advocate that no fault can be found with the Order issued by respondent no.2 to extend Time Bound Promotion Scale only with effect from 1996.

4. In the circumstances, we direct the respondents to forthwith extend Time Bound Promotional Scale benefits to the petitioner with effect from 1986 as was prayed for in the

Writ Petition and the Civil Application. That be done in any case within one month from today.

5. Insofar as reliefs in terms of prayer Clause (A)(b) to (A)(d) are concerned, Ms. Coutinho, learned Government Advocate for the respondent nos. 1 and 2, fairly concedes that the petitioner would be entitled for these reliefs. In view of the affidavit filed by the respondents before us and the submission made by the learned counsel, the petitioner would succeed also in respect of the reliefs in terms of prayer Clauses (A)(b) to (A)(d).

6. Insofar as relief in terms of prayer Clause (A)(e) is concerned, Shri Sonak, learned counsel for the petitioner fairly submits that since the petitioner has succeeded in getting other substantive reliefs the petitioner is not interested in pressing the reliefs in terms of prayer Clause (A) (e). This submission is made on instructions of the petitioner who is present in Court. Accordingly, it is not necessary for us to dwell upon the relief in terms of prayer Clause (A)(e).

7. That takes us to the last relief as prayed for in Clause (A)(f). According to the petitioner he is entitled for the necessary normal increments that are due and payable to any employee specially during the period of penalty of reduction of scale for one year. This relief is resisted on

behalf of the respondents. However, we find no substance in the objection taken by the learned counsel for the respondents having regard to the express provision made in the Order dated 9th May, 1996 passed by the Chief Electrical Engineer. The Order clearly records that the petitioner will earn increment of pay during the period of reduction and that on expiry of this period the reduction will have the effect of postponing the future increments of pay. In the wake of this Order it is not open to the respondents to now contend that the petitioner can be denied relief in terms of prayer Clause (A) (f). The operative part of the Order dated 9th May, 1996 passed by the Chief Electrical Engineer as referred to above is reproduced thus:-

> "Now, therefore, I as Disciplinary Authority having reconsidered the matter in the light of the aforesaid Inquiry Report and in view of the judgement of the High Court in Writ Petition No.207/90, hereby impose on Shri A.V.P. Gaonkar the penalty of reduction of pay by two stages, i.e. from Rs.1,325/- to Rs.1,275/- in the time scale of Rs.950-20-1150-EB-25-1500, for a period of one year from the date he reports for duty. Further, he will earn increment of pay during the period of reduction and that on expiry of this period the reduction will not have the effect of postponing of future increment of pay." (emphasis supplied)

8. Accordingly, this petition succeeds. Rule is made absolute in terms of prayer Clause (A) (a) to (A) (d) and (A) (f) with costs, quantified at Rs. 5,000/- (rupees five thousand only). That amount be paid to the petitioner within four weeks from today. We make it clear that the

respondents shall comply with this Order within not later than six weeks from today.

A. M KHANWILKAR, J.

P. V. HARDAS, J.

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